IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

CRP.No. 2659 of 2000(E)

RCA.43/1993 OF RENT CONTROL APPELLATE AUTHORITY,PALAKKAD.
RCP.101/1990 OF RENT CONTROL COURT, PALAKKAD
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REVN. PETITIONER/APPELLANT/RESPONDENT:
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1. V.R. RAJAMMAL,
W/O. R.R. MENON,
RESIDING AT RAJAMANDIRAM,
KINASSERY AMSOM DESOM,
PALAKKAD TALUK *(DIED) AND L.R. IMPLEADED.

***SUPPLEMENTAL REVISION PETITIONER IMPLEADED:**

***2. V.R. BHUVANESWARI,**
D/O. V.R. RAJAMMAL,
RAJAMANDIRAM,
KINASSERY AMSOM AND DESOM,
PALAKKAD TALUK.

***IS IMPLEADED AS SUPPLEMENTAL REVISION PETITIONER 2**
AS PER ORDER DT. 30/09/2002 ON C.M.P. 4604/2002.

BY ADV. SRI.D.KRISHNA PRASAD,
SRI.D.NARENDRANATH,
SRI.JOJI VARGHESE,
SRI.M.HARISHARMA,
SRI.T.P.ELDHOSE.

C.R.P. NO. 2659/2000:

RESPONDENTS/RESPONDENTS/PETITIONERS:
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1. **SARGUNA BAI.**

2. **RAMESH BABU.**

3. **MOHANKUMAR.**

4. **SURESHKUMAR.**

5. **SAILAKSHMI.**

THE 1ST RESPONDENT IS THE WIFE AND RESPONDENTS 2 TO 5 ARE THE CHILDREN OF KRISHNAN CHETTIAR, RESIDING AT RAJAMANDIRAM, KINASSERY AMSOM AND DESOM, PALAKKAD TALUK.

***ADDL.R6. IMPLEADED:**

***6.** **V.R. SADASIVAN,**
S/O. V.R. RAJAMMAL,
RAJAMANDIRAM, KINASSERY AMSOM AND DESOM,
PALAKKAD, KINASSERY.P.O - 678 707.

***IS IMPLEADED AS ADDL.R6. AS PER ORDER DATED 30/09/2002 ON C.M.P. 4604/2002.**

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR FOR R1 TO R5,
SMT.C.R.SARADAMANI.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/06/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P. NO. 5373/2000 IN C.R.P. NO. 2659/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE.

29/06/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 2659 of 2000

ORDER

Balachandran, J.

The tenant is the revision petitioner. She died during the pendency of this revision and her legal representatives are impleaded as additional second petitioner and additional sixth respondent. Respondents filed R.C.P.No.101/90 before the Rent Control Court, Palakkad for eviction of the tenant under Sections 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act').

2. The claim was advanced for the purpose of cassette recording business run by the third respondent at the residence of the respondents being shifted to the scheduled shop room in a commercial building, wherein the tenant is conducting a medical store. The Rent Control Court disallowed eviction under Section 11(8) of the Act,

as according to the Rent Controller, the claim fell under Section 11(3) of the Act only. Accordingly, eviction was allowed under Section 11(3) of the Act, finding bona fides in favour of the claim advanced by the respondents to have vacant possession of the scheduled shop room. It was also found, on evidence tendered by RW1, the son of the tenant, that the tenant is having agricultural land, though he is not aware of the actual income therefrom and that two residential buildings are given on rent by her. No evidence also was furnished with respect to the income derived from the business run in the scheduled shop room. For those reasons, it was found that the tenant has not proved the first limb of the second proviso to Section 11(3) of the Act; that she is depending for her livelihood mainly on the income derived from the business conducted in the scheduled shop room. It was also found on evidence that there are other buildings available in the locality for the tenant

to shift her business and further that the tenant had not made any enquiry as regards availability of other buildings for shifting her business. Thus, the second limb of second proviso to Section 11(3) of the Act was also not satisfied. The tenant was, therefore, found not entitled to protection under the second proviso to Section 11(3) of the Act. It was, accordingly that eviction was ordered under Section 11(3) of the Act. The tenant challenged the said order of eviction in R.C.A.No.43/93 filed before the Rent Control Appellate Authority, Palakkad. The said appeal was dismissed by the appellate authority concurring with the findings of the Rent Control Court. The findings so entered into concurrently by the authorities below are based on findings of fact and are not liable to be interfered with in this revision.

3. It is urged by the learned counsel for the petitioner that the up stair portion of the residential building of the respondents is got

vacated and therefore, there is sufficient space now available in the building in occupation of the respondents to run the business of the third respondent and therefore, by reason of subsequent development, respondents are not entitled to have eviction of the scheduled shop room.

4. It is worthy to note that the respondents have filed I.A.No.1563/07 to receive an affidavit filed by the second respondent in evidence. The affidavit sworn to by the second respondent shows that the third respondent got married in September 1998 and he has got a child and the fourth respondent got married in November 2000 and he is also having a child; that both of them are residing with their family with the first respondent mother in the residential building adjacent to the scheduled shop room; that portion of the upstairs of the scheduled shop room, used by the former tenant and family after his vacating, is used by the third respondent, his wife and child and that

the fourth respondent, his wife and child are using the bedrooms in the down stairs of the residential building and thus, the upstair portion or the down stair portion of the scheduled building cannot be used for business of the third respondent.

5. The need of the scheduled shop room advanced by the respondents is for shifting the cassette recording business of the third respondent from their residence to the scheduled shop room. The necessity of having his business so shifted found favour with the authorities below and the claim was found to be bona fide. The rent control petition is one, instituted as early as in 1990, viz., about sixteen years back. Obviously, changes must have come by the marriage of the third and fourth respondent, which cannot be denied by the petitioner. Thus, by the expansion of the family of the respondents, even if the up stair portion of the building is got vacated, that also has become necessary for the residential occupation of the

respondents. Hence, there is no merit in the contention advanced before us that the upstair portion of the residential building occupied by the respondents having been got vacated; that has rendered it unnecessary for the respondents to have vacant possession of the scheduled building for the purpose alleged and that the bona fides has, therefore, ceased to exist. In the circumstances, this revision is devoid of any merit and deserves only to be dismissed with costs to the respondents.

6. Finally, it is urged by the counsel for the petitioner that the petitioner be allowed reasonable time to surrender vacant possession of the scheduled building to the respondents. Counsel for the respondents submits that ever after filing of appeal in 1993, the rent of the scheduled shop room, at the rate of Rs.300/- per month has not been paid by the petitioner. Considering the above submissions, we pass the following order:

In the result, we dismiss this Civil Revision Petition. At the same time, we grant the petitioner time till 31.12.2007 to surrender vacant possession of the scheduled shop room to the respondents/landlords on the following conditions:

i. that she shall deposit the entire arrears of rent in the execution court with a detailed statement as to its correctness within three weeks from today.

ii. that she shall file affidavit before the execution court within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that she will surrender vacant possession of the scheduled shop room to the respondents/landlords positively on or before 31.12.2007 and that she will continue to pay the monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled shop room to the respondents/landlords and

iii. that in case the petitioner fails to comply with the above conditions, she shall not be entitled to the benefit of continuing in occupation of the scheduled shop room till 31.12.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against the original tenant.

(J.B.Koshy, Judge)

29th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No.2659 of 2000

ORDER

29th June, 2007